

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service;
Promoting Deployment and
Subscribership in Unserved
And Underserved Areas, Including
Tribal and Insular Areas

Commonwealth of Northern Mariana
Islands

Petitions for Reconsideration filed by:

Crow Tribal Council
Florida Public Service Commission
Fort Belknap Indian Community
Goshute Indian Reservation
National Telephone Cooperative
Association
Oglala Sioux Tribe
Rosebud Sioux Tribe
South Dakota Independent Telephone
Coalition
Western Wireless Corporation

CC Docket No. 96-45

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA**

The California Public Utilities Commission (California or CPUC) and the People of the State of California hereby submit these comments in response to the *Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking (Twenty-Fifth Order and FNPRM)* released on May 21, 2003 by the Federal

Communications Commission (FCC or Commission) in the above-captioned proceedings.

I. INTRODUCTION

In the *Twenty-Fifth Order*, the Commission reconsiders portions of its findings in the *Twelfth Report and Order* which adopted rules to provide additional, targeted universal service support to low-income consumers on tribal lands, and which established a framework for the resolution of eligible telecommunication carrier (ETC) designations under Section 241(e)(6) of the Communications Act of 1934.¹ Specifically, the Commission seeks comment on potential modifications to its rules regarding availability of enhanced Federal Lifeline and Link-Up assistance to qualifying low-income customers living “near reservations.” The Commission also seeks comment on the proposals in the record to identify geographic areas that are adjacent to the reservations, consistent with the goal of targeting enhanced Lifeline and Link-Up to the most underserved areas of the Nation.² The Commission seeks further comment on data that addresses whether these proposed target areas share the same characteristic of reservation areas, and seeks record support regarding these issues.³ The FCC requests further comment on how to minimize any administrative burdens raised by these proposals, and requests comment on additional proposals for defining the geographic areas that are near reservations to ensure that enhanced Lifeline and Link-Up support is targeted to low-income customers living in areas adjacent to, or near, reservations that share many of the same characteristics as the reservations.⁴ Lastly, the Commission seeks comment on the effect of any proposed

¹ *Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, (Twenty-Fifth Order)*, CC Docket No.96-45, (2003), FCC 03-115, at ¶1.

² *Twenty-Fifth Order*, FCC 03-115, at ¶33.

³ *Twenty-Fifth Order*, FCC 03-115, at ¶35.

⁴ *Twenty-Fifth Order*, FCC 03-115, at ¶36 & ¶37.

“new reservation” definitions on the ETC designation process.⁵ The CPUC offers comments on some of these proposals.

II. SUMMARY

The CPUC supports the Commission’s broad definition of tribal lands which includes “reservation” and “near reservation” areas. The CPUC does not support, however the FCC’s order staying implementation of the enhanced Federal Lifeline and Link-Up assistance rule amendments to the extent that they apply to qualifying low-income customers living “near reservations.” The CPUC sees no value in modifying the FCC’s rules regarding availability of enhanced Federal Lifeline and Link-Up assistance to qualifying low-income consumers living “near reservations” because it appears contrary to the Commission’s overall goal of increasing universal service to tribal lands for the reasons explained below. In fact, the Commission’s stay may perpetuate the lack of available telecommunications service on tribal lands. The CPUC proposes that the Commission maintain its broad definition of tribal lands, which includes “reservation” and “near reservation” areas in order to ensure that underserved areas and eligible populations located outside or adjacent to tribal lands have access to universal service.

III. DISCUSSION

In the *Twenty-Fifth Order*,⁶ the Commission concluded that the definition of reservation for purpose of universal service programs remains the same as that adopted in the *Twelfth Report and Order*⁷ despite the United States Department of Interior Bureau of Indian Affairs (BIA) subsequent modification of that definition for purposes of its direct assistance programs. California proposes that tribal lands should include the BIA definition of “reservation” and “near reservation” areas. As defined by BIA, “near

⁵ *Twenty-Fifth Order*, FCC 03-115, at ¶ 38.

⁶ *Twenty-Fifth Order*, FCC 03-115, at ¶2.

⁷ *Twelfth Report and Order*, 15 FCC Rcd 12208 (2000).

reservation” is designated areas or communities that are adjacent to or contiguous to reservations where financial assistance and social programs are provided.⁸ On August 31, 2000, the Commission issued an order staying implementation of the enhanced Federal Lifeline and Link-Up assistance rule to the extent they applied to qualifying low-income consumers living “near reservations.” The Commission maintains that “near reservation” areas do not possess the same characteristics (such as geographic isolation, high rates of poverty, and low telephone subscribership levels) that warrant targeting of programs to reservations.⁹ The Commission states that “near reservation areas” extend beyond exterior boundaries of reservation, and do not invoke the same jurisdictional concerns and principles of tribal sovereignty associated with areas within the exterior boundaries of reservations. More specifically, the FCC stated that the definition of “near reservation” included geographic areas that do not possess the same characteristics that warrant the targeting of these programs. California does not agree.

California is committed to the advancement of universal service to qualifying individuals residing on tribal lands. The CPUC supports the Commission’s findings in the *Twelfth Report & Order*, which concluded that significantly lower than average incomes and subscribership levels on tribal lands warrant the adoption of additional measures to increase subscribership and improve access to telecommunication service.¹⁰ Statistical evidence indicating that low-income and poverty are the key reasons for low subscribership levels on tribal lands was one of the reasons the FCC expanded existing Lifeline and Link Up programs.

⁸ See C.F.R. section 20.100.

⁹ *Twenty-Fifth Order*, FCC 03-115, at ¶13. For example, the FCC noted that areas such as Phoenix, Arizona and Sacramento, California are considered “near reservation” areas even though they are not isolated or underserved

¹⁰ *Twelfth Report and Order*, 15 FCC rcd at 12213-14; *Twenty-Fifth Report and Order*, at ¶13.

California believes that these conditions exist outside tribal lands and to individuals living “near” and “adjacent to reservations.” Therefore, the CPUC supports the broader, more encompassing definition, which enables the Commission to continue to remedy the disproportionate lower levels of infrastructure deployment, and subscribership existing in tribal communities and near reservation areas, and ensures affordable access to telecommunications services in these areas.

The Commission has recognized that American Indian and Alaska Native communities have the lowest reported telephone subscribership levels in the country. Accordingly, if the goal is to increase subscribership for these populations, California proposes a broader definition, which would target the largest audience of eligible subscribers. On the other hand, if the FCC eliminates the “near reservation” areas, the Commission may be excluding eligible subscribers from access to affordable telecommunications services and possibly perpetuate low subscribership within underserved and unserved areas.

The CPUC does not, however support the Commission imposed stay of the programs to the extent that they apply to qualifying low-income consumers located on near reservation areas. We see no benefit to the Commission’s order staying implementation of Federal Lifeline and Link-Up assistance. Consequently, it appears to be at odds with the CPUC’s and the Commission’s overall goal of advancing universal service on tribal lands since it may exclude individuals living in geographically isolated areas, with high rates of poverty, and low telephone subscribership, which may share the similar characteristics that warranted the implementation of the Lifeline and Link-Up support to reservations.

In fact, as a result of legislation, the CPUC is developing a grants program to build telecommunications infrastructure in rural, low-income unserved areas. Through our public workshop process, the CPUC has identified some 25 communities that may qualify for the grants program. These include several Tribal Lands areas: the Benton Reservation in Mono County, the Big Pine Reservation in Inyo County, the Bishop Reservation in Inyo County, the Bridgeport Reservation in Mono County, the Cortina

Rancheria in Colusa county, the Tule Reservation in Tulare County, the Yurok Reservation in Humboldt County, and the Yukon Reservation in Inyo County. As such, we recommend that whatever rule the FCC chooses to adopt, at a minimum, the rule should extend to qualifying individuals who reside outside reservation areas similar to the ones identified above.

Furthermore, California does not support the Commission's conclusion that "near reservation" areas include geographic areas that do not possess the same characteristics that warranted the targeting of support to reservations. California maintains that the impediments to subscribership and infrastructure investment on tribal lands, such as high cost and low subscribership, exist on "near reservation" areas. In fact, in California "near reservation" areas such as the one in Lake County discussed above encompass many impoverished unserved or underserved communities. This is not a unique occurrence. There are many such areas that are isolated and underserved. Therefore, extending programs to "near reservation" areas would coincide with the FCC's goal of targeting only the most underserved areas.

By contrast, failure to lift the order staying implementation, could potentially exclude underserved areas and needy populations that are located right outside of tribal lands. For example, the median income for all of Lake County in California is under \$25,000, which means that more than half of the households in the entire county qualify for California's Universal Service Lifeline Program. Most of the county is impoverished. Many of these residents are Native Americans who do not live in either the Big Valley Rancheria or Layton Rancheria in Lake County. While they do not qualify for Federal Lifeline and Link-up Programs by virtue of their locations outside of Tribal Lands, they would qualify for these programs if the broader definition of "near reservation" were used.

More specifically, the broadest definition of "near reservation," would ensure that eligible Native Americans residing off reservations would have access to telephone service, and would be consistent with the Commission's goal of targeting enhanced

Lifeline and Link-Up to the most underserved areas of the Nation.¹¹ In addition, adopting the “near reservation” definition would not require the ramp-up associated with developing criteria and implementation issues associated with other new programs.

Lastly, the CPUC supports, in concept, any other options or plans that would broaden the availability of Lifeline and Link-Up services to low-income consumers living outside of Tribal Lands who share the same underlying characteristics as those consumers residing within Tribal Land boundaries. Moreover, the CPUC recognizes the expediency and convenience of implementing a program based on existing and established Federal geographical boundaries.

IV. CONCLUSION

For the reasons stated, the CPUC recommends strongly that the FCC lift the order staying implementation of the enhanced Federal Lifeline and Link-Up assistance rule amendments to the extent they apply to low-income consumers living “near reservations.” We urge the Commission to maintain the broadest definition of tribal lands which includes the BIA definition of “reservation” and “near reservation” areas. The CPUC further supports additional options, which would broaden the availability of Lifeline, and Link-Up services to low-income consumers living outside of Tribal Lands

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¹¹ *Twenty-Fifth Report and Order*, at ¶4.

but who share the same underlying characteristics as those consumers residing within Tribal Land boundaries.

Respectfully submitted,

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